

1. The amendment filed on August 31, 2009 under 37 CFR 1.312 has been entered.

DETAILED ACTION

Status of Application

2. The elected claims 1-9 are presented for examination. Claim 1-4 and 7 are non-elected claims and are withdrawn from further consideration. Claims 5-6 are cancelled. The following rejections are made.

Information Disclosure Statement

3. Information disclosure statement (IDS) June 30, 2009 has been submitted, reviewed and considered and is attached hereto.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

4. Considering objective evidence present in the application indicating obviousness or nonobviousness
6. Claims 8 ,9 are rejected under 35 U.S.C. 103(a) as being unpatentable to Osawa (US 6692718 B1).

Regarding applicant's claim 8 and 9. Osawa discloses a method of producing a carbon nano balloon structure having a portion comprising a carbon black, having a particle diameter of at least 20nm to a temperature of at least 2000C having a portion and having a diameter of .1 to 50nm (Osawa, Abstract, col2,3,4) (Donnet, this reference is noted but not used because parameters are not high enough).

Osawa however does not disclose the hollow part or the exact range of the particle size.

It would be obvious to one of the ordinary skill in the art at the time of the invention to have the particle size in a certain range because the range of particle overlaps the claim range (In re Malagari 182 U.S.P.Q.549).

Response to Arguments

6. Applicant's arguments filed August 31, 2009 have been fully considered but they are not persuasive:

- a. With regards to the office action, applicant has cancelled claims 5 and 6. A new reference is used, Osawa, to address claims 8 and 9.

Donnet is noted for its teaching of heating Sterling FT carbon black at 2000C.

Summary

7. Claims 8 and 9 are rejected.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Correspondence

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHELLE HOU at telephone number (571)270-5847. The examiner can be reached on Monday to Friday, 8AM EST to 5PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stan Silverman can be reached on (571)272-1358. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

M.H.

/Stuart Hendrickson/
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